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JUL 20 2007

In re Application of	:	OFFICE OF PETITIONS
David Mastel	:	
Application No. 60/816,928	:	DECISION DISMISSING
Filed: March 10, 2006	:	PETITION
Attorney Docket No. None	:	

This is a decision on the petition, filed March 10, 2006, requesting, in effect, that the above-identified application be accorded a filing date of October 14, 2005, rather than the presently accorded date of March 10, 2006. The petition is being treated under 37 CFR 1.10(e).

The petition is **DISMISSED**.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on October 14, 2005, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by, *inter alia*, certificates of Express Mailing dated October 14, 2005 (EQ090098694US) and March 10, 2006 (EQ222555682US), respectively. Petitioner alleges that the application was resubmitted since the USPS erred in the handling of the Express Mail package on October 14, 2005. Petitioner states that the Express Mail package was returned to him.

Any person who mails correspondence addressed, as set out in 37 CFR 1.1 (a), to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but has the correspondence returned by the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office under 37 CFR 1.10(g). However, this procedure does not apply where the USPS returned the "Express Mail" for a reason other than an interruption or emergency in "Express Mail" service such as the address was incomplete or the correspondence included insufficient payment for the "Express Mail" service. Since petitioner has not established that the correspondence was returned by the USPS due to an interruption or emergency in "Express Mail" service, the petition is more appropriately being treated under 37 CFR 1.10(e).

37 CFR 1.10(e) states:

Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- The petition lacks items (1) through (4). Petitioner has not shown that the petition is filed promptly after he became aware that the Office did not receive the original filing. Petitioner states that the package was returned to him. However, petitioner does not disclose why the package was returned and how quickly the package was remailed to the USPTO after it was returned from the USPS. Petitioner does not suggest that the Express Mail number was placed on the paper(s) or fee(s) prior to the original mailing by Express Mail. In fact, a review of the application papers show that the Express Mail number was not placed on the paper(s) or fee(s) prior to the original mailing by Express Mail in compliance with 37 CFR 1.10. Further, there is no copy of the Express Mailing label showing a “date-in” or a showing that the requested filing date was the date the correspondence was deposited in the “Express Mail Post Office to Addressee” service prior to the last schedule pickup for the day. Therefore, the petition does not comply with the requirements of 37 CFR 1.10(e).

Further correspondence with respect to this matter should be addressed as follows:

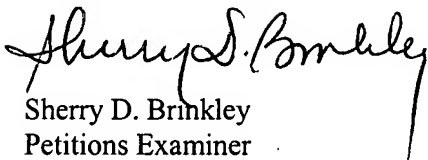
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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

A handwritten signature in black ink, appearing to read "Sherry D. Brinkley". The signature is fluid and cursive, with a long vertical line extending downwards from the end of the name.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions